A

DEDUCTION

Wherein is proved by moſt clear Arguments,

THAT THE

RIGHT of DEVOLUTION

Hath no Place among Soveraign Princes of the Lovv COUNTREYS, as ſome have gone about to perſwade: And that the Delay of Paying the *French* Queen's Dowry doth not annull

THE

RENUNCIATION

Whish ſhe made at Her

MARRIAGE.

LONDON,

Printed for *Richard Royſton*, 1667.

HIS Catholick Majesties Right TO *Brabant*, &c. Justified.

NO Man can be presumed ignorant of the Discourses which are spread abroad in all places almost of *France*, about the right of Succession in these Provinces, after the death of *Philip* the Fourth the Catholick King; nor of the private Consultations secretly held with some Lawyers of the Low Countries upon the same subject; and particularly about the devolution of the Dutchy of *Brabant*, and the breach of the conditions of Marriage, for the non-payment of the Dowry promised to the *French* Queen. All these might have been neglected, while they were the discourse of the common people only: But lest a popular errour should make some bad impressions in the minds of more understanding persons, it was thought convenient to lay open the folly of these questions so commonly dis-

cours'd of among the common people, and point out their errours, and deſtroy the foundations upon which the vulgar diſputes and deceits were built.

They endeavour to no purpoſe therefore by overthrowing the agreement made upon the Marriage, to open a Title to the Dutchy of *Brabant* for the Daughter by the firſt Marriage, and exclude the Son by the ſecond; as if thoſe clauſes of Renunciation in the ſaid agreement being taken away, the Municipal Laws of the Country muſt of neceſſity take place, by which the firſt Marriage diſſolv'd, the inheritance of the ſurviving Parent deſcends to the iſſue of the firſt Marriage, and not to that of the ſecond.

For there is nothing more certain, ſetting aſide the Renunciation, then that the Daughter can pretend no Title to ſucceed, ſo long as there is an Heir Male living: neither was the Renunciation made with ſuch a proſpect, nor in its ſelf was any neceſſary to be made; neither had that which was in the agreement of Marriage in general terms any reſpect to this, an Heir Male ſurviving the Father, but in regard of ſome other remote accidents of collateral ſucceſſion.

The Son by his own right did enjoy this prerogative to be preferr'd before the Daughters: but in caſe the whole maſculine line of the King ſhould fail, then a Renunciation was in its ſelf neceſſary, that the elder Daughter ſhould be excluded by the younger, or the next Heir of *France* by the more remote of *Spain.*

If we enquire into the firſt Laws of ſucceſſion to the Dutchy of *Brabant*, we ſhall find none more ancient or more firm then that which *Philip* King of the *Romans* eſtabliſhed in the year 1204. in the ſolemn Convention of Eſtates at *Coblens*, in theſe words: *Inſuper Regiâ noſtrâ autoritate ſtatuimus, & memorato Duci concedimus, ut Filiæ ſuæ, ſi maſculum hæredem non habuerit, in feudis ſuis liberè ei tanquam maſculi ſuccedant. Moreover we ordain by our Royal Authority, and grant to the aforeſaid Duke of* Brabant, *that his Daughters, for want of Heir Male, ſhall ſucceed him in his inheritance, as if they were Heirs Males.*

The tenour of which words contain two things; Firſt, that till then the Daughters were incapable of ſucceeding in the Dutchy of *Brabant*, ſeeing that by a new priviledge it is granted to them. The ſecond, That the Daughters are not ſimply and abſolutely

ſolutely made capable of the ſucceſſion, but with this limitation, if the Duke leaves no Heir Male; and therefore if he hath one, the ancient and former Laws of the Females incapacity remains entire and firm.

But if *Brabant* had no proper Laws of ſucceſſion, without doubt the Government ought to be diſpoſed of according to the Univerſal Law of all Nations, wherein all that treat of Polity agree, and unanimouſly declare, that Kingdoms, Principalities, and Dignities, have obſerv'd this order of ſucceſſion from their very firſt beginnings; that where the Female Sex is not wholly excluded from ſucceeding in the Government, they are notwithſtanding only admitted, when no Heir Male remains to ſucceed in the Government. *Arniſeus* in his Politicks, *Cap.* 2. *Sect.* 4. *N.* 11. ſpeaks full in this particular: *Jus in omnibus gentibus uſque à primordiis Regnorum invaluit, ut quamtumvis ſucceſſionis jure utantur, ad filias tamen Reipublicæ gubernacula non devolvantur, quamdiu mares ſuperſunt.* There hath been a Law eſtabliſhed among all Nations, from the beginning of their Government, That though they admit the right of ſucceſſion, notwithſtanding the Government of the Republick never de-

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ſcends to the Daughters, as long as there are Sons living. And *Sect.* 12. *N.* 57. and 67. He proceeds: *Fœmina, etiam major natu, in ſucceſſione indiviſibili excluditur à maſculo, & exiſtente maſculo, redigitur ad inſtar ſecundi gradus.* The Son excludes the Daughter in all indiviſible ſucceſſion; and if there be a Son, the eldeſt Daughter is conſidered as in the ſecond degree. And though in private inheritances another Law ſhould prevail, that the Females were permitted to have equal Portions with the Males, from thence therefore is it to be extended to the ſucceſſion of Princes? and is the Publick to be regulated according to the rules of private perſons?

From whence it is clear, that the Argument hath no force which is taken from the cuſtom of *Brabant*, as to the Eſtates of private men, according to which the Children by the firſt Marriage go away with the whole inheritance of their Father; the Children of the ſame Father by a ſecond Marriage being excluded, and this is called *Jus devolutionis*, the right of devolution: As if the publick ſucceſſion of the ſaid Dutchy ought to follow and be regulated by the ſame Laws that are in force among its Subjects. This not being a right way

of arguing from private successions to publick, as all Authors in Polity do acknowledge and affirm.

There is an irreconcileable difference in Reason between these two successions; for it is of much more import for a woman to take upon her the Government of a Republick, and in this to be preferred before the Males, than to admit her to the private possession of a particular Estate, the extent of Justice cannot reach from one *Species* to another where the Inequality of Reason occurs. It must needs be therefore against the known and common Rules of Justice, to wrest and distort the Law, so as to make it equally binding to publick and private Successions. But if that were granted, which yet to every common Reason must appear contradictory, and repugnant to the very Essence and Fundamentals of Empire, however this Pretence cannot touch or impeach that Right of Succession, whereby his Catholick Majesty hath so long possest the Countries now in question. For the Dutchy of *Brabant* hath received from the aforesaid King *Philip*, proper and peculiar Laws, distinct from the Municipal, as we shewed before; since whatsoever is enacted by a peculiar Law, must be understood exempted from the general.

But

But if we ſhould grant a devolution in the publick Succeſſion of the Dutchy, without doubt it were to be underſtood of perſons qualified and capable to ſucceed; but it is evident by what hath been ſaid, that Women are uncapable to ſucceed, unleſs all the Males of the Duke of *Brabant* fail. If any be remaining, then the ancient Law of *Brabant* doth continue in force: the ſame Argument ought to hold, that the Children by the firſt Marriage ſhould exclude others, ſo that they be fit and qualified to ſucceed.

No Example can be produced in any Age of ſo irregular a Succeſſion in *Brabant*, that a Woman hath been preferred before a man, in the ſame degree, in the publick Government: but on the contrary, there are not wanting Examples, where the Right of Devolution hath been neglected in the Succeſſion of the ſame Dukedom.

Charles the Fifth, after the death of his firſt Wife *Elizabeth*, Daughter of *Portugal*, by whom *Philip* was born (which *Philip* by *Mary* a Daughter alſo of *Portugal*, had Iſſue *Charles*) after the death of the ſaid *Mary*, in the year 1554. did freely diſpoſe of the Low Countries in Marriage to *Philip* the ſecond with *Mary* Queen of *England*, under this condition, that the Children to be born

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in that Marriage, should succeed in all the *Belgick* Provinces, *Charles* the Son of *Philip*, then living, being utterly excluded, which lawfully could not have been done, if by the Right of Devolution he had lost the propriety of *Brabant*, *Geldres*, &c. which had been devolved to Prince *Charles*, as the Law of private Devolutions is, that if the Grandfather and Father do both become Widdowers, the Right of Succession doth immediately rest in the Grand-child.

In the same manner *Philip* the second, being a Widower by the death of his third Wife *Elizabeth* of *France*, did in the year 1598. freely dispose of the said Provinces, to his Daughter *Isabel*, upon her Marriage with Arch-Duke *Albert*, which he then confined to certain Conditions of returning again to the Family of *Spain*, and some other Restrictions; which certainly he would never have done, if he had thought himself tied by the Right of Devolution, or that by vertue of any Municipal Law, he had been deprived of the Propriety, or power of disposing of the principal Dutchy. For if the Right of Devolution have any place in the Supream Titles of these Provinces, that Right was already setled in her, and by consequence he could neither have given them to his Daughter,

ter, nor have impoſed any condition upon her. So that by theſe Examples it is evident, that there never was any Right of Devolution in reſpect of theſe Provinces, acknowledged by the Princes of them, nor did it ever produce any effect, ſince even thoſe perſons that had moſt reaſon to pretend, remained ſatisfied.

Now if there had been any doubt of this Right, this Argument had never been omitted by the Houſe of *Savoy*, in the year 1633. after the death of the *Infanta Iſabella*, Siſter to *Catherine*, when all poſſible ſearch was made, to prove that the Succeſſion of theſe Provinces did of right belong to the Princeſs *Catherine*.

For if the Right of Devolution, which is in force among private perſons, had the ſame Priviledge as to publick Succeſſions, it were not to be maintained, but that by vertue of that Right the Provinces of the Dutchy of *Brabant* would after the death of *Philip* ſubordinately, and by the Right of degree have belonged to the ſaid *Catherine*, and ſhe dying in the year 1597. and *Iſabella* in the year 1633. if there had been no other impediment, the Heirs of *Catherine* would have had the Right of Succeſſion. But they who by their Diſputes in Print undertook to defend

ſend the Right of the Houſe of *Savoy*, and by all poſſible Reaſons to maintain its Title, deſpaired to find any ſupport from the Right of Devolution, and therefore they wholly omitted it.

There cannot be a more convincing Argument that the Right of Devolution was never of force in the Succeſſion of theſe Provinces, not only in the ſence and opinion of their Princes, but even of the whole *Belgick* Provinces, than that Decree eſtabliſht by the Emperor *Charles* the Fifth, in the year 1549. where it was enacted, That the *Belgick* Provinces ſhould never be ſeparated the one from the other, by any Diviſions of the Succeſſion, but ſhould always continue in the Poſſeſſion of one Prince, in theſe words: *Deſirans ſur toutes choſes Pourveoir au bien, repos, & tranquillité de nos Pays de par de ça, & conſerver iceux en une maſſe, & qu' elles ſoyent inſeparablement poſſedees par un ſeul Prince. Deſiring above all things to provide for the Good, Repoſe, and Tranquillity of our Countries on this ſide, and that they may remain entire and inſeparable under the Obedience of one Prince.* To effect which Deſign, the Emperor took away all difference of Succeſſion, as the only thing that oppoſed it; and in the Provinces, introduced *Jus Repreſentationis*, the

the Right of Repreſentation; by vertue of which Children entred into the place, and repreſented the perſon of their immediate Anceſtors; a thing nôt then in uſe in ſome of the ſaid Provinces, and whence was feared the diviſion of that *Belgick* Body.

Which new Conſtitution was not only received, and approved by the Eſtates of every Province, as neceſſary for their publick Peace, and Union, but alſo deſired; as appears by their Publick Acts, and afterwards ſubſcribed by all their Governors, in theſe words; *Meſmes les dits Eſtats ont fait inſtance devers nous, que vouluſſions introduire la dite loy,* &c. *Statuons & Decretons qu' en tous nos dits Pays, Repreſentation aura lieu, en ce qui touche la Succeſſion de Prince, ou Princeſſe, eſtans capables à Succeder. The aforeſaid Eſtates having been earneſt Petitioners, that we would introduce the ſaid Law,* &c. *We enact, and decree, that in all our aforeſaid Countries, the Right of Repreſentation ſhall be in force, ſo far as concerns the Succeſſion of the Prince or Princeſs, being capable to ſucceed.* And after which follows a Catalogue of Names, not only of the Princes, and Nobility, but alſo of the principal Perſons of the Gown, as the Preſident, the Chancellor, *&c.*

Now

Now if ſome of the Provinces ſhould ſtill be ſubject to the Right of Devolution, and others exempt, the care and diligence uſed upon this occaſion, would be rendred of no effect: For how could the Conjunction have poſſibly continued firm, if ſome of the Provinces by Right of Devolution ſhould deſcend to the Iſſue of the firſt *Venter*, and others to thoſe of the ſecond? Certainly that moſt wiſe and excellent Prince, through Ignorance of the Laws of his own Provinces, had there failed in his Deſign: which Conceit is not imaginable, nor would any man of the leaſt inſight into publick Affairs, have the confidence to ſay it: eſpecially when he conſiders that all the Eſtates, and moſt Learned Counſellors of the Low Countries, were concerned in the enacting of that Law. So that to believe that an Aſſembly of men ſo Learned ſhould be ignorant of the Law they themſelves live under, and ſo converſant in, is beyond all probability.

That which hath been ſaid of the Dutchy of *Brabant*, ought to be applied not only to that of *Limbourg*, (which all men know is unſeparably annexed to it) but alſo to the Dutchy of *Gelders*: For the ſame Law which *Philip* King of the *Romans* preſcribed in the year 1204. for regulating the ſucceſ-

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ſion of the Dutchy of *Brabant*, the Emperor *Charles* the Fifth in the year 1549. at the inſtance of the Eſtates of that Province, eſtabliſht for the Dutchy of *Gelders*, by which Women, in defect of Heirs Males, are admitted to the Succeſſion of that Dutchy, in theſe words; *Authoritate noſtrâ, & de plenitudine Poteſtatis, decernimus, & declaramus, hoc noſtro Cæſareo Edicto perpetuo, quod in noſtro Ducatu* Geldriæ, *&* Zutphaniæ *Comitatu, uti in cæteris noſtris Provinciis Patrimonialibus, & hæreditariis, deinceps omni & quocunque tempore, fœminæ, non extantibus maſculis hæredibus, ſuccedere poſſint & debeant*, &c. *By our Authority and abſolute power, we do decree, and declare, by this our Imperial Edict, that in our Dutchy of* Gelders, *and County of* Zutphen, *as in all other our Patrimonial and hereditary Dominions, hereafter, and at all times, Women may, and ought to ſucceed, when there are no heirs Males extant*, &c. By which Edict the ſame Arguments which were uſed for the Dutchy of *Brabant*, are in force, not only for the Dutchy of *Gelders*, but alſo for all other Provinces, ſeeing nothing can be more manifeſt than the words, *Uti in cæteris Provinciis Patrimonialibus & hæreditariis. As in all other our Patrimonial and hereditary Provinces.*

For

For the County of *Namur*, it was not neceſſary to ſay any thing, becauſe it is known to all men, that in the year 1418. it was by the conſent of the Eſtates ſold by *John* the laſt Duke thereof, to *Philip le Bon* Duke of *Burgundy*, and deliver'd on this condition, that it ſhould perpetually, and inſeparably be annex'd to the County of *Flanders*; with which therefore it ought to be ſubject to the ſame Law of ſucceſſion: which not being regulated by this particular Law of Devolution, ſo neither can the County of *Namur*, though among particular perſons the ſaid Law continue in force.

But if it were granted that there was neither Law nor Contract, it is moſt certain that the County of *Namur* was held as a Member of *Henaut*, and ſhould in reaſon be therefore bound to follow in ſucceſſion the Laws of the Superior, among which without queſtion, this was one; that the Son of the ſecond Wife in a lineal ſucceſſion, ſhould be prefer'd before the Daughters of the firſt Wife, either in publick or private ſucceſſions.

But that they might leave nothing unattempted, they ſay as to the ſucceſſion of *Henault*, that in the fourth Article of the

the Customs of the said Province under the Title of *des Alleus*. *Statuitur, Allodia patrimonialia pertinere ad liberos primi matrimonii, sive Filium, sive Filiam, & quamdiu hi supersunt, locum non dari prolibus sequentis Connubii. It is decreed, that inheritances belong to the issue of the first Wife, whether Male or Female, and as long as they live, the issue of the second Wife is utterly excluded.* Within which constitution, they would by all means include the County it self, as free and independent, and by consequence to be accounted free from the tenure of a Superior Signiory: But the weakness of the objection does sufficiently appear by a following clause in the same Article, which ordains, that if these goods come by a collateral succession, they shall be divided among the Children of both Wives; which division certainly can in no wise concern the County it self, seeing that according to the common use of Nations, this Principality goes alwaies entire to the eldest Son, as the Annals and Publick Records of all successions evince by innumerable examples.

Of the same nature is another of their arguments drawn from the same Customs. *Cap.* 91. *Art.* 3. Whereby Estates acquired

during the Marriage, are deſcendable to the iſſue of that Marriage: For as they account theſe Provinces as purchaſed and acquired by his Catholick Majeſty, becauſe by the death of the moſt Serene *Infanta Iſabella*, which happen'd in the year 1633. they reverted to his Majeſty of *Spain*, by vertue of an agreement annexed to a contract of Marriage, in the year 1598: But beſides what hath been ſo often ſaid, the cuſtom of inheriting among Subjects, cannot give Law to a publick ſucceſſion, which hath alwaies had its rules apart by its ſelf, differing from that of private Eſtates: And that cuſtom which ſo advances Children to the inheritance, ought ſtill to admit this reſtriction, *If they be capable to ſucceed*; which Women except for defect of Heir Male in the ſame degree, cannot be ſaid to be in the caſe of Dominion and Government: And though the cuſtom of *Henault* were in force as to ſuch a ſucceſſion, it muſt however be underſtood, with this exception; *Unleſs a Male ſhould ſurvive together.*

Which appears ſo clear, that there can be nothing more requiſite to be ſpoken as to that particular; but if it were, yet it might eaſily be evinced from the writings of

of the *French* Authors themſelves, that whatſoever either by the Right of Inheritance, Succeſſion of Nations, or by an Agreement upon the Marriage of any Anceſtor, deſcends upon the Husband during the Marriage, cannot be adjudged an acquiſition or purchaſe of the Husband by the marriage; which the Preſident of *Britany Argentré* (whom all other Authors readily follow) allows for an undeniable interpretation of all ſuch Cuſtoms, in his Commentary upon the 418th. Article of the Cuſtoms of the ſaid Provinces.

It were a thing meerly ſuperfluous, to diſcourſe particularly of all the Provinces; ſince the Emperor *Charles* the fifth hath declared in ſo few words, That Women ſhall then only be admitted to the Succeſſion of them, *Maſculis non extantibus*; *when there are no Heirs Males in being.* Which doth abſolutely take away all Objections.

Theſe things being ſo, it might ſeem to little purpoſe, further to diſpute the Validity of the Renunciation made by the *Infanta* of *Spain*, now Queen of *France*, at her Contract of Marriage; ſince it already appears (ſetting the Renunciation aſide) that the Heir Male, though by the ſecond *Venter*, ought to ſucceed before the Female by the firſt.

But if there ſhould poſſibly any Controverſie ariſe about a collateral Succeſſion, and the *Infanta* of *Spain*, as in neareſt degree ſhould demand it, however ſhe muſt neceſſarily be excluded by the exceptions of the Renunciation made by her ſelf: For that in the moſt ample and expreſſive terms that could be, by her Oath, ſhe declared her ſelf excluded, from ever claiming any of the Dominions of the Catholick King her Father, and this upon the concluſion of the Marriage, for the eſtabliſhing the univerſal peace of *Europe*, in the preſence and with the Applauſe of the whole Chriſtian world, the Kings themſelves, with the Princes of the Bloud, and the Chief Nobility of both Kingdoms being preſent, and aſſiſting, than which nothing could have been more Sacred or Solemn.

In ſuch publick and ſolemn Treaties, the Subtleties of Lawyers ought not to be permitted, which are too often intruding into private Tranſactions, as about the Daughters Renunciation, being then an Infant; of the non-payment of the Portion-Money at the day limited; and others of the ſame nature: which Niceties and Cavils are no where more exploded, than by the Lawyers of *France*; whoſe Opinions thoſe of their own

own Nation cannot juſtly decline. In the number of which learned men, may be accounted *Anæus*, *Robert*, *Chopin*, *Molinæus*, *Cujacius*, *Papone*, *Charond*, *Maynard*, *Faber*, and many other Authors of great eſteem; among whom, the moſt eminent Collector of Arrets, *Lowet*, and his Commentator, *Brodeaux*, who, among the reſt of the Reſolutions of the Supream Courts of Judicature, report ſuch Renunciation of Daughters, without any reſpect had to their Minority, or illegal compulſion, to be eſteemed valid, and good in Law, eſpecially thoſe which tend to the preſervation of Noble Families. The Words of *Brodeaux*, *Lit. R. n.* 17. are theſe; *C'eſt choſe certaine, & reglé par les Arreſts, que telles Renonciations aux Succeſſions futures, directes, & collaterales, par un Contract de Marriage, du quel les clauſes contenantes les renonciations ſont acceſſoires, & par coherence, prennent la meſme nature; ſoit entre nobles, ou roturiers; & que les Filles n' en peuvent eſtre relevees, pour quelque cauſe & pretexte que ce ſoit, de Minorité, Crainte, ou Leſion enorme.* 'Tis a caſe certain and reſolved by the Courts of Parliament, that ſuch Renunciations of future Succeſſions, either lineal, or collateral, made upon Contract of Marriage, ſuch Clauſes of Renun-

ciation being coherent and agreeable to the ſaid Contract, become of the ſame nature; whether between Princes, or others; And that ſuch Daughters cannot be relieved, either by alledging Minority, Fear, Violence, or any other pretence whatever.

But the ſtrongeſt Objection made by the other ſide, is a Clauſe inſerted in the Contract of Marriage; which in *French* runs thus: *Que moyennant le payement effectif fait à ſa Majeſté tres Chriſtienne, des dicts Cinq cents mille eſcus, aux termes qu'il a eſté cy-devant dit, la dite Sereniſſime Infante ſe tiendra pour contente,* &c. *That by the true and juſt payment, to be made to her moſt Chriſtian Majeſty, of the ſaid five hundred thouſand Crowns, at the time aforeſaid, the moſt Serene* Infanta *ſhall remain fully ſatisfied and content,* &c.

And if the Money be not paid nor tendred (ſay they) at the time appointed, then the Conſideration and Cauſe of the Renunciation ceaſeth, and conſequently the Renunciation it ſelf. But the Equity of Law, corrects the ſeverity of ſuch proceedings, and admits the Party to take off his default, and ſave the breach of the Condition, as the Law appears to be. *L.* 37. *ff. de verb. oblig. Nam Promiſſor poſt moram offerendo, purgat moram.*

moram. A Tender after the day, saves the Forfeiture. However if things should be taken in the greatest extremity, yet the effect of the non-payment is not that thereby the Contract should be dissolved, but that the damage which ensues thereupon be repaired. So it is also if a Purchaser fail in the payment of his Purchase-Money at the day, yet his Purchase remains absolute, and shall never be defeated, if he pays the Interest, and makes satisfaction for the damage ensued upon his delay. Those great Lawyers of *France* before mentioned, and commended, in this very kind of Renunciation upon the Marriage, insisting upon the common Law, admit of no avoiding of the Renunciation for defect of payment of the Dowry; because as *Molinæus* the Chief Practiser in *France* holds: *Filia non per numerationem Dotis, sed per conventionem excluditur. The Daughter is excluded by the Agreement, and not by the payment of her Portion.* And those who by a more indulgent and favourable Law do grant that the Paternal Estate may revert to the Daughter, allow it, but with this restriction, that before the Daughter be admitted for non-payment of her Dowry, to the Inheritance, she her self renounced, a further day of Payment be first assigned, before

which ſhe is not to be admitted to the poſſeſſion, as *Brodeaux*, *Lit. R. Num.* 18. affirms upon the Judgment of the reſt of the Counſellors of *France*.

To conclude, the Renunciation of the Daughter is defective (as they ſay) in this particular, that ſhe did not only renounce a future and uncertain Succeſſion, but alſo a Right gained by Devolution; and the Propriety of the Paternal Goods, acquired by the diſſolution of Marriage, which the Authority of the Law doth not permit to thoſe that are under Age: ſeeing that ſuch Renunciations of Daughters, are not admitted upon any other conſideration, but in regard that for the incertitude of the future Succeſſion, and the dubious event of profit or damage, no prejudice can be conceived yet; which contrariwiſe is apparent, when they do not only renounce a ſucceſſion which may fall to them, but which is already fallen.

But over and above what hath been ſaid, whereby it is clear that the Right of Devolution is rejected in publick Succeſſions, it is apparent, that this way of arguing, and deceit, proceeds from the Ignorance of the Nature of the ſaid Right of Devolution, ſeeing that it is decreed and eſtabliſhed by the con-

conſtant authority of cauſes already determined by the Law, which have the force of a cuſtom, that the right of Devolution cannot be eſteemed for a *ſpecies* of Succeſſion, which doth give unto the Children of the firſt *venter* the propriety of the Fathers goods, he being yet alive; for it is certain, *Viventis non eſſe hæreditatem: That there is no inheritance of the living:* and that all that the right of Devolution doth effect, is to put a certain tye upon the Fathers goods, in behalf of the Children, that he may not alienate them, and that they may ſucceed after the death of their Parents; which ſeeing alſo may fail, when the Children dye before their Father; here therefore cannot be imagined any certitude of acquiſition, which the Daughter may not Renounce: Neither can it be ſaid that the propriety doth belong to the Children immediately after the Diſſolution of the Marriage; and this is the genuine ſenſe of this cuſtomary Law of the Low Countries, which the Practitioners and Lawyers of *France*, being ſtrangers, were till now ignorant of: But they may learn, if they pleaſe, to peruſe the Writings of the Lawyers of the *Belgick* Provinces: Among the reſt ſome 80 years ſince, *Joannes Wameſius* was very eminent;

who

who *Cent. 6. Cons.* 58. writes after this manner: *Consuetudinaria Devolutio proprietatis non est successio, sed vinculum tantum quod superstiti injicitur, & quo bona etiam afficiuntur, ne liberâ voluntate superstitis alienari vel pignorari possint, quo vinculo proprie dici non potest quod superstes desinat esse Proprietarius eorundem bonorum; cujus indicium est, quod liberis primi matrimonii, quorum favore hoc vinculum injectum est, decedentibus ante Conjugem superstitem, veluti prædicto vinculo dissoluto, superstes liberum arbitrium disponendi de iisdem bonis recuperet suo Jure, non ut hæres liberorum,* &c. *A customary Devolution of propriety is not a Succession, but is only an obligation which is cast upon the Survivor; and wherewith the goods also are affected, that they cannot by the free will of the Survivor be alienated, or mortgag'd; by which tye it cannot properly be said that the Survivor ceaseth to be the proprietor of the said goods; which is evident, because the Children of the first venter, in whose favour this tye is put, coming to dye before the Father or Mother, the surviving Parent is freed from the aforesaid tye, and may at his pleasure dispose of the aforesaid goods, having recover'd his right, not as Heir to his Children.*

Seeing

Seeing therefore that the right of Devolution ought to be plac'd among uncertain caſes, ſo the Renunciation which is made, ought to ſubſiſt in regard of this, as in reſpect of other events.

But theſe things which are here alledged concerning this particular and ſpecial Law of deſcent, and the Renunciation which was made of it, is more then the neceſſity of the queſtion requires; ſince 'tis well enough known to all perſons converſant in publick affairs, that there is no ſuch law as to the publick ſucceſſion in the Government of *Brabant*, *Gelderland*, *Limburg*, *Namur*, nor of any other Province or Country, in all the Catholick Kings Dominions.

Notwithſtanding if through the variety or obſcurity of particular cuſtoms any thing of doubt ſhould yet remain, it would be clearly removed by that eſpecial Covenant, compriſed in the Treaty of Marriage, agreed upon and confirm'd by both Kings, which had no relation to the Dowry, but was made to keep both Crowns in perpetual equality: And to prevent all occaſions that might happen of uniting two ſo great Kingdoms. *Placuit utriqne Regi pactione inſtar legis ſemper valiturâ ſancire, ne unqnam ſereniſſima Infans Thereſa, aut poſteri ejus ulli,*

ad

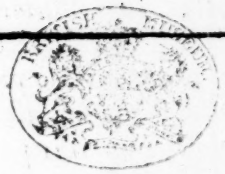
ad ſeros uſque Nepotes, quocunque gradu ſint, admittantur ad ſucceſſionem ullam, ſive Regnorum, ſive Principatuum, Provinciarum, Ditionum, Dominiorum quorumcunque Regis Catholici, non obſtante lege ulla, conſuetudine aut alio Jure in contrarium, cui utriuſque Regis authoritate pleniſſimè derogatur, contemplatione dictæ æqualitatis, & publicæ utilitatis quæ inde emanatura ſperatur. It was conſented to by both their Majeſties, and by them confirm'd, that neither the moſt Serene Infanta Thereſa, nor any of her Iſſue or Poſterity, in what degree ſoever, be admitted to ſucceed in any of the Kingdoms, Dukedoms, Provinces, or Dominions of his Catholick Majeſty, any other Cuſtom, Conſtitution, or Law to the contrary notwithſtanding: So that if any ſuch Cuſtom or Conſtitution were, it was by authority of both Kings abſolutely annuil'd and deſtroyed. And this only to adjuſt the Dominion of both Crowns, ſo as each of them might receive an equal benefit by it. The very words of which clauſe moſt evidently prove, that how far ſoever ſuch a cuſtom might prevail as to private Inheritances, yet as to the publick it was wholly reſtrained. *The Article in the French is this. Eſtant les deux Couronnes ſi grandes, & ſi puiſſantes, qu'elles ne puiſſent eſtre reunies en*

une

une ſeule, & afin que dez à preſent on previenne les occaſions d'une pareille jonction, &c. *Donques attendües les ſuſdites Juſtes raiſons, & notamment de l'egalité qui ſe doit conſerver, leurs Majeſtez accordent & arreſtent par Contract, & Pacte conventionnel entre elles, qui aura lieu, force, & vigueur de la loy ferme, & ſtable à tout jamais, que la Sereniſſime* Infante d'Eſpagne, *ni ſes Enfans, & leurs Deſcendants, en quel degré ils ſe puiſſent trouver, voire à tout jamais, ne puiſſent ſucceder és Royaumes, Eſtats, Seigneuries, & Dominations,* &c. *qui appartiennent, & appartiendront à ſa Majeſté Catholique, tant dedans que dehors le Royaume* d'Eſpagne, *nonobſtant toutes loix, ou coutumes,* &c. *aux quelles leurs Majeſtez derogent,* &c. *The two Crowns being ſo great and ſo puiſſant, that they cannot be united into one Kingdom, and that to the end that from this preſent, all occaſions of ſuch a conjunction may be avoided: Therefore upon due conſideration had of the aforeſaid reaſons, eſpecially that of equality, which ought to be preſerv'd: It is accorded between both their Majeſties, and by mutual Covenant and Contract ordained, which ſhall continue in the full force and vigour of a Law for ever, that the moſt Serene* Infanta *of* Spain, *her Children, nor deſcendants in what degree ſoever,*

soever, shall never succeed in the Kingdoms, Signiories, or Dominions, which do or shall belong to his Catholick Majesty, as well within as without the Kingdom of Spain, *notwithstanding any Law, or Custom, which hereby their Majesties do abolish.*

Which clause is so express and clear, as no person can possibly deny himself satisfied with it; unless such a one, that esteems all Agreements to be something or nothing, as his will and interest direct him.



FINIS.